

Appendix H

Fundamental Nature of Boroughs and Cities in Alaska

Fundamental Nature of Boroughs and Cities in Alaska

The Commission recognizes several fundamental principles about borough governments and city governments in Alaska. These principles are grounded in the constitutional and decisional law of the State of Alaska as well as earlier decisions of the Commission.

1. Each Borough and Each City is Both a Municipality and Political Subdivision.

Boroughs and cities are municipal corporations and political subdivisions of the State of Alaska. AS 29.04.010 – 29.04.020. They are the only types of municipalities in Alaska.¹ *Id.*; Art. X, sec. 2, Ak Const.

2. The Function of Boroughs Is Comparable to that of Home Rule and First Class Cities in the Unorganized Borough.

Generally, the powers and duties of home rule and first class cities in the unorganized borough are comparable to those of boroughs. There are, of course, subtle distinctions between the powers and duties of particular classes of boroughs. The same is true for home rule and first class cities in the unorganized borough.²

¹ In addition to “city” and “borough,” AS 29.04.010 refers to “a unified municipality.” A unified municipality is a borough as defined in 3 AAC 110.990(1). More specifically, a unified municipality is a home rule borough in which city governments are precluded. AS 29.71.800(24). See also Department of Community and Economic Development, *Local Government in Alaska* at 4 (2001).

² Consider, for example, the following comparison between a first class borough and a first class city in the unorganized borough. A first class borough has three mandatory areawide responsibilities. Those are education, assessment and collection of taxes, and land use regulation. AS 29.35.150 – AS 29.35.180. In comparison, a first class city in the unorganized borough has the duty to “establish, operate, and maintain a system of public schools as provided by AS 29.35.160 for boroughs.” AS 29.35.260(b). Further, the law stipulates that a “first class city outside a borough shall . . . provide for planning, platting, and land use regulation as provided by AS 29.35.180(a) for first and second class boroughs.” AS 29.35.260(c). Additionally, a first class city in the unorganized borough may assess, levy, and collect a property tax in the manner provided by law for boroughs. AS 29.45.550. Lastly, a first class city in the unorganized borough “may levy and collect sales and use taxes in the manner provided for boroughs.” AS 29.45.700(c).

Beyond its three mandatory functions, a first class borough has broad discretionary powers. The law provides that a “first class borough may exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law.” AS 29.35.200(a). Similar language exists with respect to the powers of cities in the unorganized borough. Specifically, the law provides that “[a] city outside a borough may exercise a power not otherwise prohibited by law.” AS 29.35.260(a).

Prohibitions and limitations on the powers of second class cities in the unorganized borough are significantly greater than is the case for first class cities. For example, a second class city in the unorganized borough is prohibited from operating a school district, while a first class city outside a borough is required to operate a school district. AS 29.35.260(b). Further, a second class city in the unorganized borough is permitted, but not required, to exercise land use regulation. AS 29.35.260(c). Another example is the limited taxing property authority for a second class city. AS 29.45.590. In contrast, limitations on the powers of a first class city in the unorganized borough are similar to those of a first class borough.

3. A Borough Is a Regional Municipality Whereas a City is a Community-Based Municipality.

As noted in subparts A-1 and A-2, cities and boroughs are identical in certain fundamental respects. Both are municipal corporations and political subdivisions. Moreover, the powers and duties of boroughs are comparable to those of home rule and first class cities in the unorganized borough.

However, major distinctions exist between boroughs and cities with respect to form. Boroughs are governments that serve relatively large natural regions. In contrast, city governments are relatively small community-based governments. Thus, home rule and first class cities may exercise borough-like powers, but only within city-like jurisdictions. Additional specifics about the distinctions between boroughs and cities are noted in subparts A-3-a and A-3-b below.

a. The “Limitations of Communities” Doctrine Does Not Apply to Boroughs but Does to Cities.

Cities are subject to the “limitation of community” doctrine while boroughs are not. The Alaska Supreme Court held as follows concerning that distinction:³

[Appellants] offer a series of cases striking down municipal annexations and incorporations where the lands taken have been found to receive no benefit. We find this authority unpersuasive when applied to borough incorporation. In most of these cases, the courts inferred from statutes or state constitutions what has been called a ‘limitation of community’ which requires that the area taken into a municipality be urban or semi-urban in character.

There must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty. . . .

The limitation has been found implicit in words like ‘city’ or ‘town’ in statutes and constitutions or inferred from a general public policy of encouraging mining or agriculture. In other cases, the limitation has been expressed as a finding that the land taken is not susceptible to urban municipal uses. The result in these cases was determined not by a test of due process but by restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations.

Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. art. X, § 1. And boroughs are not restricted to the form and function of municipalities. They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.

³ In the *Mobil Oil* case (involving incorporation of the North Slope Borough) the Court addressed the limitation of communities doctrine by making a distinction between boroughs and what it termed “municipalities” (e.g., “boroughs are not restricted to the form and function of municipalities”). Clearly, in the view of the Commission, the Court was referring in the *Mobil Oil* case to “cities” (or derivatives thereof such as “city”, or “city government”) when it used the term “municipalities”, (or derivatives thereof such as “municipality”, or “municipal”). It is significant in that regard that when the North Slope Borough incorporation petition was filed, statutory standards and procedures for borough incorporation as well as other laws concerning boroughs were codified in “Alaska Statutes – Title 7 – Boroughs.” In contrast, statutes relating to cities were codified in “Alaska Statutes – Title 29 – Municipal Corporations.” The Court made reference to borough standards and other provisions in AS 07 seventeen times in the *Mobil Oil* case. In 1972, Titles 7 and 29 of the Alaska Statutes were repealed and new laws concerning both cities and boroughs were enacted as “Alaska Statutes – Title 29 – Municipal Government”. Today, AS 29 refers to both cities and boroughs as municipalities. The distinction in the terms used by the Court in *Mobil Oil* to describe the two types of governments (i.e., “boroughs” and “municipalities”) was purely nominal. However, the distinction made by the Court as to the form of the two types of governments (boroughs and cities) was significant.

Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92, 100 (Alaska 1974) (footnotes omitted).

The Commission finds that the limitation of communities doctrine is, indeed, implicit in the Alaska statutes concerning incorporation of cities. In particular, AS 29.05.011 provides as follows (emphasis added):

Incorporation of a city.

(a) A community that meets the following standards may incorporate as a first class or home rule city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support city government;

(5) there is a demonstrated need for city government.

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city.

Moreover, the limitation of communities doctrine is explicit in terms of the Commission's regulations governing city incorporation and annexation.⁴ For example, 3 AAC 110.040(b) provides:

The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation.

Further, 3 AAC 110.040(c) provides:

The boundaries of the proposed city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.005 - 3 AAC 110.042.

b. Geographically, Boroughs Were Envisioned as Relatively Large Regional Units While Cities Are Intended to Be Relatively Small Units.

The Local Government Committee at the Alaska Constitutional Convention envisioned boroughs as units of government that would cover large areas. According to Vic Fischer:⁵

⁴ The Commission has a duty under AS 44.33.812(a)(2) to adopt regulations providing standards and procedures for incorporation of cities and boroughs. Further, AS 29.05.100(a) conditions approval of a city incorporation petition upon a determination by the Commission that the standards it has adopted in regulation are satisfied.

⁵ Mr. Fischer is recognized by the Alaska Supreme Court as "an authority on Alaska government." *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1244 (Alaska 1995). The Court has relied on his work in the *Keane* case (1242, 1243) and in the *Mobil Oil* case (98). Mr. Fischer is well known to most members of the Commission. He has addressed the majority of the current Commission in the past on a number of occasions concerning matters relating to local government in Alaska. Most recently, he addressed all current members of the Commission on August 10, 2002. Mr. Fischer received a bachelor's degree from the University of Wisconsin in 1948 and a Master's Degree in Community Planning from the Massachusetts Institute of Technology in 1950. He also received the Littauer Fellowship in public administration from Harvard University (1961-1962). Mr. Fischer has held several planning related positions in Alaska. He was a delegate to the Alaska Constitution Convention in 1955-1956.

(continued . . .)

As the committee was evolving [borough] principles, its members agreed that some type of unit larger than the city and smaller than the state was required to provide both for a measure of local self-government and for performance of state functions on a regionalized basis.

... the initial principles set forth by the committee for consideration in the formation of the new areawide government units included these guidelines: ...

- Units should cover large geographic areas with common economic, social, and political interests. ...

Victor Fischer, *Alaska's Constitutional Convention*, p. 118 – 119, (1975).

This fundamental characteristic of boroughs is reflected in Article X, Section 3 of the Constitution.

SECTION 3. BOROUGH. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their

(... continued)

During the convention he was a member of the Committee on Local Government and served as its Secretary. Mr. Fischer has written and co-authored a number of books and publications concerning state and local government in Alaska. These include *The State and Local Governmental System* (1970), *Borough Government in Alaska* (1971), and *Alaska's Constitutional Convention* (1975). Mr. Fischer served in Alaska's Territorial House of Representatives (1957-1959) and the Alaska State Senate (1981-1986). He was a member of the faculty of the University of Alaska Fairbanks and of the University of Alaska Anchorage. At the University, he was primarily associated with the Institute for Social and Economic Research, where he was director for ten years. His current work includes studying Alaska Native and regional governance issues.

powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

The fourth sentence of Article X, Section 3, which provides that “[e]ach borough shall embrace an area and population with common interests to the maximum degree possible”, is particularly significant with regard to the fundamental characteristic at issue. This sentence, by itself, does not indicate the territorial or socioeconomic scale at which the commonality of interests ought to be evaluated. The minutes of the Alaska Constitutional Convention, however, provide compelling evidence as to the framers’ intent with respect to the character and scope of boroughs. In the following exchange, delegate John Rosswog, Chairman of the Committee on Local Government, responded to a query from delegate John Coghill on January 19, 1956 about the Committee’s intent with respect to the language that each borough shall embrace an area and population with common interests to the maximum degree possible.

COGHILL: Further on in Section 3, I would like to ask you, Mr. Rosswog, on line 6 of page 2, “Each borough shall embrace, to the maximum extent possible, an area and population with common interests.” My question here is directed to you to find out what the Committee’s thinking was as to boundary areas of local government. Could you give us any light on that as to the extent? I know that you have delegated the powers to a commission, but you have said that each borough shall embrace the maximum extent possible. I am thinking now of an area that has maybe five or six economic factors in it – would they come under one borough?

ROSSWOG: We had thought that the boundaries should be flexible, of course, and should be set up so that we would not want too small a unit, because that is a problem that has been one of the great problems in the states, the very small units, and they get beyond, or they must be combined or extended.

Proceedings of the Alaska Constitutional Convention, Alaska State Legislature, Legislative Council p. 2620 – 2621 (1963).

A nearly identical question arose on the floor of the Convention later that same day. Delegate Barrie White inquired about the Local Government Committee's intent with respect to the term "maximum extent possible." Committee member James Doogan and Committee Chairman John Rosswog responded:

WHITE: Mr. President, on page 2, Section 3, I would like to ask the Committee, on line 4, if the words "to the maximum extent possible" could be construed to mean the largest possible area?

PRESIDENT EGAN: Mr. Doogan.



James Doogan, Constitutional Convention Delegate

DOOGAN: I think that is the intent. It was pointed out here that these boroughs would embrace the economic and other factors as much as would be compatible with the borough, and it was the intent of the Committee that these boroughs would be as large as could possibly be made and embrace all of these things.

WHITE: Is it the thinking of the Committee that the largest possible area, combining area and population, with common interest, would be the most desirable type of borough?

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Could I answer on that? I think that was the idea or the thinking of the Committee that they would have to be fairly large but the wording here would mean that we should take into consideration the area and population and common interest to the maximum extent possible because you could not say definitely that you were taking it all in, but as much as you possibly could.

Id. p. 2638.

The following day, January 20, 1956, delegate Katherine Nordale raised the virtually identical question. Vic Fischer, Local Government Committee Secretary responded.



Katherine Nordale, Constitutional Convention Delegate

NORDALE: Mr. President, I think this was brought up yesterday, but I have sort of forgotten what was said. It is just a question. On line 4, page 2 of Section 3, there was some discussion of the wording, "Each borough shall embrace to the maximum extent possible an area and population with common interests." Does that mean to the greatest degree it shall be a group of people with

common interests? Nothing to do with the area — I mean the square mile?

V. FISHER: What it means is that wherever possible, "Each borough shall embrace an area and population with common interests."

Id. p. 2711.

In summary, the constitutional, statutory, and regulatory standards for local governmental boundaries indicate that cities are meant to be local community governments, and boroughs are meant to be regional governments. Indeed, it is difficult to suppose that a city government's boundaries could be consistent with both 3 AAC 110.040(b) and the constitutional and statutory standards for borough boundaries.

4. Both Cities and Boroughs Must Embrace Areas with Common Social, Cultural, and Economic Interests, but the Requisite Degree for Such Is Significantly Greater for Cities than Boroughs.

As noted with respect to subpart A-3-a of this section of the decisional statement, each city government must embrace a community. For purposes of the Local Boundary Commission, the term “community” is defined in law. A community is comprised of a discrete area and population with significant common interests concerning social, cultural, economic, and other characteristics.⁶

As noted in subpart A-3-b of this decisional statement, the fourth sentence of Article X, Section 3 of the constitution stipulates that each borough must maximize the area and population, but with the condition that the maximum area and population also have common interests. However, the requirement for maximum area and population necessarily presumes an acceptable level of common interests less than that found at the community level.

The following discussion on the floor of the Constitutional Convention on January 19, 1956 between delegate James Hurley, Local Government Committee Chairman John Rosswog, Local Government Committee member Eldor Lee and delegate John Hellenthal is important in several respects in terms of defining the nature of a borough. It demonstrates that the Local Government Committee had no precise upper or lower limits in mind regarding the geographic size of boroughs. It also stresses the importance of flexibility in setting borough boundaries. Further, the dialogue provides additional evidence that the delegates foresaw, in general terms, relatively large boroughs. Perhaps most importantly, however, the exchange provides insights with respect to the framers’ vision concerning the requisite degree of common interests within boroughs.



James Hurley, Constitutional Convention Delegate

HURLEY: Mr. President, going back to Section 4, the matter has been mentioned many times about the possible thinking as to the size of the boroughs. I took occasion to check back into the criteria which would be used for the establishment of election districts. I find that except for two

different words they are the same as the criteria that you use for the establishment of boroughs: population, geographic features, and the election districts say integrated socio-economic areas, and you say economy and common interests which I think means the same thing. Consequently, I might be led to the conclusion that your thinking could well be carried out by making election districts and boroughs contiguous or congruous, the same area, is that true?

ROSSWOG: It was thought this should be left very flexible. Of course, you would not say they should be the same as election districts because of rather unwieldiness for governing. It would more possibly, and should, take more study of whether the size should bear on whether your governing body would be able to supervise an area of that size.

⁶ A “community” is defined by 3 AAC 110.990(5) to mean a social unit of 25 or more permanent residents as determined by 3 AAC 110.920. A community exists where individuals reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living. Factors such as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers are evidence of a community. Further, the law presumes that a population does not constitute a community if public access to or the right to reside at the settlement is restricted, if the population is adjacent to a community and is dependent upon that community for its existence, or if the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

PRESIDENT EGAN: Mr. Lee.



Eldor Lee, Constitutional Convention Delegate

LEE: Mr. Hurley, I think we are unanimous in the opinion that many of these boroughs will be substantially the same as election districts but that is just the idea that we had in mind. Some of them won't be feasible, but in our thinking I consider that form of boroughs we felt they would be much the same as an election district.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: Did any of you think that they might ever be greater than the election districts in size?

LEE: If that question is directed to me, we did not give it any consideration because actually we have not made any statement about the size. But in our thinking we didn't consider that thought, but it is certainly very possible.

HELLENTHAL: In other words, that the boundaries of the election districts could possibly be maximums governing the size of the boroughs?

LEE: It is possible. It is up to the legislature to decide.

HELLENTHAL: Would it be desirable to make them minimums?

LEE: That would take away the flexible portion which we wish to keep here.



John Hellenenthal, Constitutional Convention Delegate

HELLENTHAL: I gather then you would not desire to make them minimums but probably would have little objection to making them maximum.

LEE: I can't speak for the Committee. I would have no objection, personally.

The framers envisioned that the initial State election districts would be, in many cases, models for future boroughs. As originally adopted, Article VI, Section 6 of Alaska's constitution established the following standards for drawing State House election districts (emphasis added by underlining):⁷

Section 6. Redistricting. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

The Alaska Supreme Court addressed the meaning of the term "relatively integrated socio-economic area" with respect to election districts in *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992) (emphasis added):

The Alaska Constitution requires districts comprising "relatively integrated" areas. . . . "Relatively" means that we compare proposed districts to other previously existing and proposed districts as well as principal

⁷ Article VI was amended in 1999. The amendments dealt principally with the process for redistricting. However, two changes dealt somewhat with the standards. Both occurred in the third sentence which was revised as follows (added text in bold type and underlined, deleted text struck through): "Each shall contain a population **as near as practicable at least equal** to the quotient obtained by dividing the ~~total civilian~~ population **of the state** by forty."

alternative districts to determine if socio-economic links are sufficient. “Relatively” does not mean “minimally,” and it does not weaken the constitutional requirement of integration.

The framers’ vision that the initial State election districts were, in many cases, models for future boroughs is reinforced by the fact that election district boundaries were used to define prospective boroughs in the 1963 Mandatory Borough Act. As introduced by Representative John L. Rader, the mandatory borough legislation called for the compulsory incorporation of the nine State election districts in Alaska that encompassed independent school districts.⁸

The mandatory borough legislation was introduced just four years after Alaska’s constitution took effect. The short interval between those two seminal events, in the view of the Commission, is further evidence of the suitability of the early election districts for borough boundaries. Six of the twenty members (30%) of the 1963 Senate had been delegates to the Constitutional Convention.⁹ Additionally, two members of the 1963 House of Representatives had been Constitutional Convention delegates.¹⁰

Moreover, the Commission considers it noteworthy that the use of election districts to define borough boundaries in the 1963 mandatory borough legislation occurred just two years after the Alaska Legislature first adopted statutory standards for incorporation of boroughs. That fact becomes even more significant when it is recognized that 11 of the 20 Senators (55%) and 23 of the 40 Representatives (57.5%) in the 1963 Legislature had held the same elected offices during the 1961 Legislature.¹¹

While the early State election districts were viewed by the framers to be, in many cases, suitable borough models, the Commission does not take the position that the same is necessarily true today. Social and economic integration remains a fundamental characteristic of election districts for the State of Alaska, however, there have been numerous social, political, and legal developments which have had great influence over the size and configuration of

election districts in Alaska. Social changes include a significantly greater concentration of Alaska’s population in southcentral Alaska. Political changes include the uniform use of single-member election districts throughout Alaska.¹² They also include the enactment of legislation such as the Federal Voting Rights Act which have significantly influenced the

⁸ House Bill No. 90 provided that the areas would be incorporated as boroughs by legislative fiat if the voters in those regions failed to form boroughs before January 1, 1964. The nine regions were designated as follows in Section 3 of House Bill No. 90:

- (1) Anchorage Election District;
- (2) Lynn Canal – Icy Straits Election District;
- (3) Ketchikan – Prince of Wales Election District;
- (4) Kodiak Election District;
- (5) Palmer – Wasilla – Talkeetna Election District;
- (6) Sitka Election District;
- (7) Fairbanks – Fort Yukon Election District;
- (8) Juneau Election District; and
- (9) Kenai – Cook Inlet Election District.

⁹ The former delegates in the 1963 Senate were Senators Coghill, Kilcher, McNealy, Nolan, Peratrovich, and Smith.

¹⁰ The former delegates that were members of the 1963 House of Representatives were Representatives Sweeney and Taylor.

¹¹ The Senators were Bronson, Coghill, Hopson, McNealy, Nolan, Owen, Peratrovich, Brad Phillips, Vance Phillips, Smith, and Walsh. The Representatives were Baggen, Baker, Binkley, Blodgett, Boardman, Cashel, Christiansen, Ditman, Hammond, Harris, Jarvela, Kendall, Kubley, Leonard, Longworth, Parsons, Pearson, Reed, Sanders, Stalker, Strandberg, Sweeney, and Taylor.

¹² The initial election districts in the more populous areas of Alaska encompassed multiple House seats to retain their regional characteristics. Of the original 24 districts, five were two-member districts, one was a five-member district, and one was an eight-member district. The remaining seventeen districts were all single-member districts. The current plan utilizes forty single-member districts, which diminishes the regional character of those districts in the more populous areas.

configuration of election districts in Alaska. Lastly, judicial rulings have shaped election districts. For example, in *Hickel v. Southeast Conference*, *id.* at 62, the Alaska Supreme Court directed that certain factors be given priority in the drawing of house election districts:¹³

Priority must be given first to the Federal Constitution, second to the federal voting rights act, and third to the requirements of article VI, section 6 of the Alaska Constitution. The requirements of article VI, section 6 shall receive priority inter se in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.

While it can no longer be said that election districts make for ideal borough boundaries in most cases, the original vision does provide a measure of the geographic scale within which boroughs were expected to exhibit a distinguishing degree of social, cultural, and economic integration.

5. Boroughs Should Generally Include Multiple Communities and Should Be Able to Provide Services Efficiently and Effectively.

As noted in subparts A-3 and A-4, city governments are intended to be small governmental units with intense common interests, while boroughs are envisioned as large governmental units with moderate common interests.

Other indications of the intended difference in scale between cities and boroughs also exist. For example, Article X, Section 5 of the constitution allows boroughs to establish service areas. There is no comparable constitutional provision for city governments.¹⁴ In the Commission's view, such reflects the vision that, as relatively large units of government, boroughs require the flexibility to establish service areas to meet the varying needs of particular communities within boroughs.

Another indicator of the framers' vision regarding the relative scale of city and borough governments is found in Article X, Section 7 of Alaska's

constitution. That provision reinforces the perspective that boroughs are large units and cities are small units by stating that cities, "shall be part of the borough in which they are located."

On January 20, 1956, delegate Vic Fischer expressed the view that it is 'unimaginable' that a city would be the same size as a borough as reflected in the following exchange.¹⁵

GRAY: Mr. Chairman, I would like to ask the Committee a question. Is it possible under Section 5 that the city council complete would also be complete in the assembly? Is it quite possible?

V. FISCHER: I think that would be possible only if the borough was the same size as the city, or if the legislature provided that the people outside of the city shall have no representation.

GRAY: It could be so?

V. FISCHER: I could not imagine it happening.

¹³ The Alaska Supreme Court adhered to the same priorities in *re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002).

¹⁴ The Commission recognizes that AS 29.45.580 authorizes city governments to establish differential property tax zones. In some respects, those are the city equivalent to a borough service area. However, the Commission still considers Article X, Section 5 to be evidence of the intended large scale of boroughs.

¹⁵ The dialog was also relevant in terms of original Article X, Section 4 of Alaska's constitution which provided in relevant part that:

Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities.

The provision was repealed in 1972.

Finally, Article X, Section 13 authorizes cities to transfer, and revoke transfer of city power and functions to the borough in which it is located. There is no similar constitutional provision for transfer of borough powers and duties to cities. This asymmetry is consistent with the notion that boroughs would have broader jurisdiction than cities.

6. The Constitution Encourages a Minimum Number of Boroughs.

Article X, Section 1 of the Constitution of the State of Alaska provides, in part, that “[t]he purpose of this article is to provide for maximum local self-government with a minimum of local government units. . .”

Vic Fischer indicates that one of the fundamental principles concerning borough formation set forth by the Local Government Committee was that, “units should be large enough to prevent too many subdivisions in Alaska . . .” Victor Fischer, *supra*, p. 119.

The Commission concludes that the creation of boroughs should be limited, not to a specific total number, but by the principle that only the minimum number of governments necessary to provide effective and efficient local self-government should be created.

7. Borough Boundaries Should be Established at the State Level to Reflect State-Wide Considerations as well as Regional Criteria and Local Interests.

Article X, Section 12 of Alaska’s constitution provides for the establishment of the Local Boundary Commission. Of the 116 active State boards and commissions, only the Local Boundary Commission and four others have origins in the constitution.¹⁶

The Alaska Supreme Court observed that the Commission was created to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal governments. Specifically, the Court stated:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

. . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

8. Alaska’s Constitution Encourages the Extension of Borough Government; However, All Standards Must be Met and the Commission is not Obligated to Approve Proposals that Only Minimally Meet the Standards.

Article X, Section 1 of Alaska’s constitution promotes maximum local self-government which encourages the extension of borough government in areas that satisfy the standards for borough incorporation and annexation. In this regard, the Alaska Supreme Court held as follows:

¹⁶ The other four are the (legislative) Redistricting Board, Judicial Council, Commission on Judicial Conduct, and the University Board of Regents.

Our review of the record has been undertaken in light of the statement of purpose accompanying article X, the local government article, of the Alaska constitution. Section 1 declares in part:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. . . .

We read this to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.

Mobil Oil, supra, at 99.

However, the Commission stresses that it is prohibited from approving any borough proposal if the application does not meet each applicable standard established in the Constitution of the State of Alaska, Alaska Statutes, and the Alaska Administrative Code. Specifically, Alaska Statute 29.05.100(a) provides as follows:

The Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under ... 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition.

The use of the term “shall” in the third sentence of AS 29.05.100(a) clearly indicates that the Commission must reject any proposal if it does not meet each of the applicable standards, with or without amendments and/or conditions.

While the Supreme Court held in the *Mobil Oil* case that Article X, Section 1 of the constitution should be read to favor upholding of an LBC-approved incorporation whenever the requirements for incorporation have been minimally met, the Court also held in a subsequent case that the Commission is not obligated to approve any minimally acceptable petition. Specifically, the Court stated:

Petitioners’ arguments, however, reflect the mistaken premise that the LBC must approve any minimally acceptable petition for incorporation and has only limited authority to consider or adopt “the most desirable” borough boundaries.

It is difficult to conjecture circumstances under which the Commission would reject a borough proposal if it met each of the applicable standards; however, the Commission clearly has that prerogative. The use of the term “may” in the second sentence of AS 29.05.100(a) leaves no doubt that the Commission has discretion to approve any borough incorporation petition, even if it meets all requisite standards.

9. Boroughs Should Not Be Prematurely Formed when Local Government Needs Can Be Met by City Annexation or Incorporation.

Occasionally, communities in the unorganized borough express interest in borough formation, particularly, single-community boroughs, when the expansion of boundaries of an existing city or the incorporation of a new city would be more fitting and would serve the needs of the territory in question.